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SENATE BILL 2353

By Fowler

AN ACT to amend Tennessee Code Annotated, Title 26; Title 30; Title 31; Title 32; Title 33; Title 35 and Title 66, relative to transfers in trust; the administration of estates; probate of wills; transfers to defeat elective share, removal of fiduciaries, records of adjudication of competence, and recording of wills.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 26-4-101, is amended in subsection (a) by inserting the word "a" between the words "in" and "trust" each place those words appear and is further amended by adding the following new subsection (d):

(d) For purposes of this section, the defendant's "interest in property held in a trust" will not be deemed to have proceeded from the defendant merely because of a lapse, waiver or release of the defendant's right to withdraw a part of the trust property transferred to the trust by someone other than the defendant if the value of the property that could be withdrawn by exercising the right of withdrawal in any calendar year does not exceed at the time of the lapse, waiver or release the greater of the amount specified in:

(1) Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986;

or

(2) Section 2503(b) of the Internal Revenue Code of 1986.

SECTION 2. Tennessee Code Annotated, Section 30-1-106, is amended by deleting the words "the largest" in the third sentence and inserting the word "a" before the word "creditor".

SECTION 3. Tennessee Code Annotated, Title 30, Chapter 1, is amended by adding the following new section to be appropriately designated:

30-1-____ Procedure for removal. Any executor or administrator may be removed in accordance with the procedures in Tennessee Code Annotated, Section 35-1-106.

SECTION 4. Tennessee Code Annotated, Section 31-1-105, is amended by deleting the section in its entirety and substituting instead the following:

31-1-105. Any conveyance made fraudulently to children or others, with an intent to defeat the surviving spouse of his or her distributive or elective share, is, at the election of the surviving spouse, includable in the decedent's net estate under Tennessee Code Annotated, Section 31-4-101(b), and voidable to the extent the other assets in the decedent's net estate are insufficient to fund and pay the elective share amount payable to the surviving spouse under Tennessee Code Annotated, Section 31-4-101(c).

SECTION 5. Tennessee Code Annotated, Section 31-4-102(a)(2), is amended by deleting the word "dissent" and substituting instead the words "take the elective share".

SECTION 6. Tennessee Code Annotated, Section 31-4-105, is amended by deleting the word "dissent" in the first sentence and substituting instead the words "electing the elective share".

SECTION 7. Tennessee Code Annotated, Section 32-2-111, is amended by deleting the "Any" at the beginning of the section and by substituting instead the following at the beginning of the section:

Regardless of the date of the person's death and any limitation on the time for admitting a will for probate, any

SECTION 8. Tennessee Code Annotated, Title 32, Chapter 3, is amended by adding the following new section to be appropriately designated:

32-3-____ Power of appointment. This section applies only to powers of appointment exercisable by will.

(a) Capacity of holder of power. A power of appointment by will that is not subject to an express condition that it may be exercised only by a holder of a greater age may be exercised by a holder who has attained the age of eighteen (18) years.

(b) Manner of exercise of power. Unless a contrary intent is evidenced by the terms of the instrument creating or limiting a power of appointment, a donee of a power of appointment exercisable by will may:

- (1) make appointments of present or future interests or both;
- (2) make appointments with conditions and limitations;
- (3) make appointments with restraints on alienation upon the appointed interests;
- (4) make appointments of interests to a trustee for the benefit of one (1) or more objects of the power;
- (5) make appointments that create in the object of the power additional powers of appointment to permissible objects of the power of appointment pursuant to which the powers are created; and
- (6) if the donee could appoint outright to the object of a power, make appointments that create in the object of the power additional powers of appointment that may be exercisable in favor of such persons or entities as the person creating the power may direct, even though the objects of the additional powers of appointment may not have been permissible objects of the original

power of appointment pursuant to which the additional powers are created; provided, however, that the donee may not create a power that would violate any applicable rule against perpetuities.

(c) Disposition of trust property subject to power. In disposing of trust property subject to a power of appointment exercisable by will, a trustee acting in good faith shall have no liability to any appointee or taker in default of appointment for relying upon a will believed to be the will of the donee of the power of appointment, for assuming that there is no will in the absence of actual knowledge thereof within three (3) months after the death of the donee, or for requiring that any will purporting to exercise a power of appointment be admitted to probate. The trustee's action in accordance with the preceding sentence shall not affect the rights of any appointee or taker in default of appointment to recover the distributed property from any person to whom the trustee shall have made distribution.

(d) Applicability. This act shall be construed as being declarative of existing law and shall apply to all instruments granting general and special powers of appointment and all wills exercising those powers, whether existing or exercised before, on, or after the effective date of this act, except that no trustee shall be liable to any person in whose favor a power of appointment may have been exercised for any distribution of property made to persons entitled to take in default of the effective exercise of the power of appointment to the extent that the distribution shall have been completed prior to the effective date of this act.

SECTION 9. Tennessee Code Annotated, Section 33-3-109, is amended by deleting the section in its entirety.

SECTION 10. Tennessee Code Annotated, Section 35-1-106(a)(2)(C), is amended by deleting the words after "unless" and inserting "the provisions of Tennessee Code Annotated, Sections 35-50-107(a)(2) and 35-50-107(b) would permit the trustee to continue serving;".

SECTION 11. Tennessee Code Annotated, Section 35-1-106(a), is further amended by adding the following as a new subdivision (3):

(3) Regardless of whether a motion is made in open court with the trustee present or a petition filed and a hearing conducted, the court which is currently presiding over the trust may, on its own initiative, remove a trustee if it reasonably appears to the court that the trustee has or is failing to fulfill his, her or its fiduciary duties generally, including but not limited to the following: that the trustee is not acting in good faith, or that the trustee has or is misappropriating funds or assets, or that the trustee has or is engaged in self dealing for his, her or its benefit or for the benefit of another to the detriment of the trust or its beneficiaries or both. The court may initiate proceedings through appropriate procedures, including but not limited to show cause notices and hearings. Moreover, the court may remove the trustee without prior notice or the opportunity for a hearing if the court reasonably believes that a delay poses a risk of harm, damage or diminution in value to the trust or its beneficiaries.

SECTION 12. Tennessee Code Annotated, Section 35-1-106, is further amended by adding the following as new subsection (c):

(c) Any trustee removed pursuant to (a)(3) without a hearing, may file a petition to seek reinstatement. The petition for reinstatement shall state the grounds upon which the reinstatement is sought. A copy thereof shall be served upon the successor trustee and all beneficiaries at least ten (10) days before the matter is heard. All interested parties may be permitted to file responsive pleadings and discovery. Evidence may be heard orally or by deposition. The foregoing notwithstanding, the removal of the trustee pursuant to (a)(3) above shall not be stayed pending the hearing on the petition for reinstatement or appeal.

SECTION 13. Tennessee Code Annotated, Section 66-24-101(16), is amended by deleting it in its entirety and substituting instead the following:

(16) Wills devising lands in Tennessee, or certified copies thereof, duly admitted to probate in Tennessee or in other states, together with certified copies of related probate orders.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.